land for him. Instead, the agent bought the land for himself, giving his own money therefor, and taking title in his own name; whereupon, the complainant brought suit to have a trust impressed upon the lands for his benefit. *Held,* the defendant holds the land under a constructive trust for the plaintiff. *Harrop* v. *Cole* (N. J. Eq.), 95 Atl. 378.

There is much conflict as to whether, when an agent who has orally agreed to purchase land for his principal, purchases the land for himself and with his own funds, the agent can be held a trustee for the benefit of his principal. The cases decided on this point are determined on the question of whether or not the transaction is within the Statute of Frauds. Quite a number of cases hold that to enforce such a trust, where no part of the purchase money is paid by the principal, would be directly in the teeth of the Statute of Frauds; that it would be to uphold an oral contract for the transfer of land. *Burden* v. *Sheridan,* 36 Iowa 125, 14 Am. Rep. 505; *Dougan* v. *Bemis,* 95 Minn. 220, 103 N. W. 882, 5 Ann. Cas. 253; *Nash* v. *Jones,* 41 W. Va. 769, 24 S. E. 592.

The better view seems to be that a constructive trust is raised by the law on account of the abuse of confidence placed in the agent, and not through any oral agreement creating the relation of principal and agent, and hence not within the Statute of Frauds. *Rose* v. *Hayden,* 35 Kan. 106, 10 Pac. 554, 57 Am. Rep. 145; *Bryan* v. *McNaughton,* 38 Kan. 98, 16 Pac. 57; *Johnson* v. *Haywood,* 74 Neb. 157, 103 N. W. 1058, 5 L. R. A. (N. S.) 112; *Morris* v. *Reigel,* 19 S. D. 26, 101 N. W. 1086. On principle, this view seems perfectly sound, since the trust arises not out of any contract, but out of the relation, and evidence of any oral agreement would merely go to prove the agency. It seems, also, that the fact that the purchase money was paid or not, by the principal, should not determine the existence of the trust, but should only affect the weight of the evidence establishing the relation of principal and agent. *Rose* v. *Hayden, supra.*

DESCENT AND DISTRIBUTION—RELEASE OF EXPECTANCY AS HEIR—EFFECT.—A prospective heir assigned by quitclaim deed to two co-heirs all her present future interest as heir in the estates of her deceased father and living mother. Two of her co-heirs in the father's estate had previously died intestate and the mother had inherited from them. Upon the death of assigning heir and later that of the mother, the heirs of the assignor filed a bill in equity against the assignees for a partition of the property inherited by the mother from the deceased co-heirs. *Held,* the partition is granted. *Donough* v. *Garland* (Ill.), 109 N. E. 1015.

At common law a release or an assignment made by a prospective heir of his expectancy in an ancestor's estate was declared void and was not enforceable against him. *Carleton* v. *Leighton,* 3 Mer. 667; *Needles* v. *Needles,* 7 Ohio St. 432, 70 Am. Dec. 85. But even at common law such a contract was enforceable, if the releasing heir covenanted with warranty, and the contract was made upon a fair consideration without oppression or advantage being taken of him. *Fitch* v. *Fitch,* 8 Pick. (Mass.), 479; *Trull* v. *Eastman,* 3 Met. (Mass.), 121, 37 Am. Dec. 126. In equity, however, an express agreement on the part of the assigning heir, based on a valuable consideration, to relinquish

his interest in the estate of the ancestor is binding on him, and estops him from claiming his interest in the estate after the ancestor's death. *Hobson* v. *Trevor,* 2 P. Wms. 191; *Brands* v. *De Witt,* 44 N. J. Eq. 545, 14 Atl. 894, 6 Am. St. Rep. 909. And this seems to be the majority view, when the heir has released his expectancy to his ancestor. *Lockyer* v. *Savage,* 2 Str. 947; *In re Simon,* 158 Mich. 256, 122 N. W. 544, 17 Ann. Cas. 723. Or assigned to a co-heir. *Hale* v. *Hollon,* 90 Tex. 427, 39 S. W. 287, 59 Am. St. Rep. 819, 36 L. R. A. 75. Or contracted to release to a third person. *Clendening* v. *Wyatt,* 54 Kan. 523, 38 Pac. 792, 33 L. R. A. 278. Some cases hold, however, that such a contract if entered into without the assent or knowledge of the ancestor, will not be upheld. *McClure* v. *Raben,* 133 Ind. 507, 33 N. E. 275. Though it has been held that the assignment is valid regardless of whether the ancestor had knowledge of or assented to the contract. *Hale* v. *Hollon, supra.* And where the contract concerns land it must be in writing under the Statute of Frauds. *Gary* v. *Newton,* 201 Ill. 170, 66 N. E. 267. The assignment will be valid if made for a fair, though inadequate, consideration if unaccompanied by circumstances of fraud or gross inequality. *Crum* v. *Sawyer,* 132 Ill. 443, 24 N. E. 956. Though in England the rule seems well established that mere inadequacy of consideration alone will invalidate such a contract. *Portmore* v. *Taylor,* 4 Sim. 182, 9 L. J. Ch. 203; *Gowland* v. *De Faria,* 17 Ves. Jun. 20. And, though the releasing heir dies before the ancestor, the release will nevertheless be binding upon the releasor's heirs. *Quarles* v. *Quarles,* 4 Mass. 580; *Simpson* v. *Simpson,* 114 Ill. 603, 4 N. E. 137, 7 N. E. 287.

A minority line of cases refuse to recognize the validity of such assignments either at law or in equity; such courts refusing to permit the course of descent to be altered by any agreement of parties. *Towles* v. *Roundtree,* 10 Fla. 299; *Headrick* v. *McDowell,* 102 Va. 124, 45 S. E. 804, 65 L. R. A. 578; *Elliott* v. *Leslie,* 124 Ky. 553, 99 S. W. 619, 124 Am. St. Rep. 418. These authorities seem to recognize fully that they are in direct conflict with the view generally accepted in this country and in England but they regard the doctrine of assignment of expectancies by heirs as subversive of the best interest of public policy.

The instant case seems to make a distinction where the heir dies before the ancestor in whose estate he has released his expectancy holding such a release valid and binding if made to the ancestor, but invalid and of no effect where the assignment is to a third person. This distinction does not seem to be made by the authorities.

HUSBAND AND WIFE—SEPARATION AGREEMENTS—SETTLEMENT OF PROPERTY RIGHTS.—A husband and wife, permanently separated, made an agreement, in order to settle their property rights, that the husband should pay a certain sum for the maintenance of the wife. In return, she agreed not to claim alimony in their pending divorce proceedings. The wife, after obtaining a divorce without alimony, brought a suit to enforce the husband's contract. *Held,* the contract will be enforced. *Amspocker* v. *Amspocker* (Neb.), 155 N. W. 602.

The early common law recognized no suit upon a contract between husband and wife, the ecclesiastical courts having cognizance of the